

REMARKS

Claims 1-24 are pending in the application, with claims 1-8, 12, 14, 15, 21, 23, and 24 being currently withdrawn.

Withdrawn independent claim 1 also has been amended to recite, in part, “the dome structure configured for being coupled with a basal surface of a ventricular portion of the heart” to mirror the language of the corresponding portion of independent claim 9.

In this Official Action, Examiner alleges that the application has patentably distinct species in each of three separate Groups (1-3). Group 1 includes a basal dome with species shown in Figs. 1(a), 1(d), 3(a), and 3(b), such species being further divided into three groupings which include a) basal dome with non-flared apertures, b) a basal dome with flared apertures, and c) a dome with a yolk (versus one without). Group 2 includes attachment means with species shown in Figs. 4(a), 4(b), 5(a), 5(b), and 5(c) while Group 3 includes connecting means with species shown in Figs. 8(a) and 8(b). Such attachment means and connecting means species are alleged to have separate and distinct features as illustrated by the classification of suture/attachment elements as set forth in class 606. In addition, Examiner alleges that no claims are generic. *See* Official Action, page 2.

In view of the above, Applicant elects the species of Fig. 1(a) of Group 1, i.e., “a basal dome with non-flared apertures”, with traverse, with independent claim 9 and dependent claims 10, 11, 13, 16-20, and 22 arguably reading thereon. In addition, Applicant submits that Examiner is incorrect in stating that there is no generic claim and respectfully asserts that the application as filed does, in fact, contain a generic claim, claim 9.

Claim 9 specifically calls for “an assistive heart-actuating dome structure...the dome structure having at least one opening formed therein and the dome structure, proximate the

opening, being configured to interface with at least one of an atrial chamber and a great vessel of the heart.” Notably, the other claims of the species in each of Groups 1-3, which are further discussed below, all read upon the limitations of claim 9. Specifically, claims 10-24 depend directly or indirectly therefrom while withdrawn and currently amended independent claim 1 (along with its dependent claims) includes all of the limitations of claim 9. Hence, claim 9 is submitted to be a generic claim and, upon allowance, would result in all of the withdrawn claims being restored and allowed.

Applicant now turns to the species of each of Groups 1-3.

With respect to Group 1 (basal dome), the basal dome species of Fig. 1(a), as mentioned above, reads on independent claim 9 and dependent claims 10, 11, 13, 16-20, and 22. Specifically, Fig. 1(a) shows an excised heart with a basal ‘dome’ or ‘cap’ in place seen from the right ventricular aspect, which is understood to correspond to Examiner’s reference to “a basal dome with non-flared apertures.” The species of Figs. 3(a) and 3(b) read on dependent claims 14 and 15. Figs. 3(a) and 3(b) show a dome with flared extensions to support the external walls of great vessels and/or atria, which is understood to correspond to Examiner’s reference to “a basal dome with flared apertures”.

It is further respectfully submitted that a search for either of the above two species, i.e., a dome with or without flared extensions, would likely encompass a search for both. As the search effort would thus be generally the same, the Office resources would be sufficient to address all issues in one case, rather than place Applicant at risk of having to endure the costs of multiple filings and, if successful, multiple patents. Hence, it is submitted that this specie’s election requirement, i.e., the election of species in Group 1 between a dome with or without flared extensions (a and b), is inappropriate for that reason alone.

Further concerning Group 1 (basal dome), the species of Fig. 1(d) reads on independent claim 1 and dependent claims 2, 3, 5, 8, 23, and 24. Fig. 1(d) shows a yoke arc, i.e., an actuating element, in position with the dome and is understood to correspond to Examiner's reference to "a dome with a yoke".

With respect to Group 2 (attachment or securing means), the securing means species of Fig. 4(a) does not presently read on any claims. Fig. 4(a) shows means for securing margins of a dome opening to walls of the great vessels or atria via suturing. The species of Fig. 4(b) reads on dependent claims 4 and 12. Fig. 4(b) shows securing means including an interlocking ring on the left atrium. The species of Fig. 5(a) and of Figs. 5(b) and 5(c) read on dependent claim 6. Figs. 5(a), 5(b), and 5(c) show suture structures, i.e., respectively, pledgets (Fig. 5(a)) and annuloplasty rings (Figs. 5(b) and 5(c)), positioned internally of at least one of the atria and great vessels and sutures spanning a wall of one of the atria and great vessels and anchoring the dome structure with the suture structure. In addition, the species of Figs. 5(b) and 5(c) further read on dependent claims 7 and 21.

With respect to Group 3 (connecting means), the connecting means species of Figs. 8(a) and 8(b) does not presently read on any claims. However, for purposes of illustrating stabilizing or actuating elements, Figs. 8(a) and 8(b), like the species of Fig. 1(d) of Group 1 (i.e., dome with yolk), reads on independent claim 1 and dependent claims 2, 3, 5, 8, 23, and 24. Specifically, Figs. 8(a) and 8(b) show the dome utilized in conjunction with stabilizing elements or actuating elements for actuation of the heart.

Finally, since the previous Examiner did not require any such restriction, Applicant asserts that this is sufficient indication that the searching for Groups 1-3 would not be unduly burdensome for the present Examiner.

In view of the foregoing, Applicant requests withdrawal of the present election requirement (or at the very least a merging of Group 1a and 1b) and, in any event, elects the species of Fig. 1(a) of Group I, with independent (and generic) claim 9 and dependent claims 10, 11, 13, 16-20, and 22 being readable thereon. Applicant respectfully solicits examination on the merits and a formal Notice of Allowance at the earliest opportunity. Applicant also has submitted all fees believed to be necessary herewith. Should any additional fees or surcharges be deemed necessary, Examiner has authorization to charge fees or credit any overpayment to Deposit Account No. 23-3000.

Respectfully submitted,
WOOD, HERRON & EVANS, L.L.P.

By /Randall S. Jackson, Jr./
Randall S. Jackson, Jr.
Reg. 48,248

2700 Carew Tower
Cincinnati, OH 45202
(513) 241-2324
(513) 241-6234 (facsimile)